Quality Color Graphics, Inc. and American Heatset East Printing, a Single Employer *and* Local One-L, Amalgamated Lithographers of America, Graphic Communications International Union, AFL–CIO Cases 29–CA–23263 and 29–CA–23301

April 28, 2000

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge and an amended charge filed by Local One-L, Amalgamated Lithographers of America, Graphic Communications International Union, AFL–CIO (the Union) in Case 29–CA–23263 on January 18 and March 9, 2000, respectively, and a charge filed by the Union in Case 29–CA–23301 on February 9, 2000, the General Counsel of the National Labor Relations Board issued a consolidated complaint (complaint) on March 9, 2000, against Quality Color Graphics, Inc. and American Heatset East Printing, Inc., the Respondents, a single employer, alleging that they have violated Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act. Although properly served copies of the charges and the complaint, the Respondents failed to file an answer.

On March 31, 2000, the General Counsel filed a Motion for Default Summary Judgment with the Board. On April 4, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, until on about November 19, 1999, Respondent Quality Color Graphics, Inc. (Respondent Quality), a New York corporation with its principal office and place of business located at 31 Crossways East, Bohemia, New York (the Bohemia facility), was engaged in the printing business. During the 12-month period ending on about November 19, 1999, Respondent Quality, in the course and conduct of its business operations described above, provided services valued in excess of $50,000 to customers located within the State of New York, which customers met a direct test for the assertion of jurisdiction. We find that at all material times Respondent Quality has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, Respondent American Heatset East Printing, Inc. (Respondent American), a New York corporation with its principal office and place of business located at the Bohemia facility, has been engaged in the printing business. During the 12-month period preceding issuance of the complaint, which period is representative of its annual operations in general, Respondent American, in the course and conduct of its business operations described above, provided services valued in excess of $50,000 to customers located within the State of New York, which customers meet a direct test for the assertion of jurisdiction. We find that at all material times Respondent American has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

We find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Respondent Quality and Respondent American have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; and have held themselves out to the public as a single integrated business enterprise. Based on their operations described above, we find that Respondent Quality and Respondent American constitute a single integrated business enterprise and a single employer within the meaning of the Act.

At all material times, the following individuals have held the position set forth opposite their names and have been agents of the Respondents acting on their behalf and/or supervisors of the Respondents within the meaning of Section 2(11) of the Act:

Paul A. Pappas	President of Respondents
Roland Colombo	Foreman

The following employees of the Respondents (the unit) constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time lithographic production employees in the sheet-fed, electronic prepress and preparatory/prepress departments excluding sales, professional, office and clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

Since about 1995, the Union has been the certified collective-bargaining representative of the unit and since then has been recognized as the representative by the Respondents. This recognition has been embodied in a series of collective-bargaining agreements between the Union and Respondent Quality, the most recent of which is effective by its terms for the period September 30, 1998, to June 30, 2002.

At all material times, the Union, by virtue of Section 9(a) of the Act, has been the exclusive collective-bargaining representative of the employees in the unit, for the purposes of collective bargaining.

The 1998–2002 collective-bargaining agreement described above contains provisions, set forth in section 12(a), which require, among other things, the Respondents to notify the Union of their intentions to discharge or change the regular work shift of a shop delegate, and to give the Union a reasonable opportunity to confer with the Respondents about that discharge or change in work shift.

On about December 31, 1999, the Respondents discharged William Santiago, a unit employee and a shop delegate for the Union, and since that date, the Respondents have failed and refused to reinstate Santiago to his former position.

The Respondents discharged and refuse to reinstate Santiago because (1) Santiago engaged in union activities and support for the Union, (2) he did not select Local 72, National Organization of Industrial Trade Unions (Local 72) as the bargaining representative of the unit, and (3) Santiago gave testimony to the Board in the form of an affidavit in Cases 29–CA–23136 and 29–CA–23164.

Further, the Respondents discharged Santiago without notifying the Union of their intentions to discharge him and without giving the Union a reasonable opportunity to confer with the Respondents about this discharge, in violation of section 12(a) of the collective-bargaining agreement described above.

The parties' 1998–2002 collective-bargaining agreement also contains provisions, set forth in section 7, which provide that accredited representatives of the Union shall have access to the Respondents' Bohemia facility, with the permission of the Respondents. In January 2000, the Union, by its officer Harold Davidhoff, requested permission from the Respondents for access to their Bohemia facility pursuant to section 7 of its collective-bargaining agreement with the Respondents. Since January 2000, the Respondents have refused to grant access to the Union to the Respondents' Bohemia facility.

The Respondents' discharge of Santiago and the refusal to reinstate him, their failure to notify the Union of their intentions to discharge Santiago, and the refusal to grant the Union access to the Bohemia facility pursuant to the collective-bargaining agreement all relate to wages, hours, and other terms and conditions of employment of the unit, and are mandatory subjects for the purposes of collective bargaining.

CONCLUSIONS OF LAW

By discharging and refusing to reinstate William Santiago because of his union activities and support for the Union, and because he did not select Local 72 as the bargaining representative, the Respondents have discriminated in regard to hire and tenure and terms of conditions of employment of their employees, thereby discouraging membership in a labor organization, and have therefore engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) of the Act.

In addition, by discharging and refusing to reinstate Santiago because he gave testimony to the Board, the Respondents have violated Section 8(a)(4) and (1) of the Act.

Further, the Respondents have refused to bargain collectively with the exclusive representative of the unit employees in violation of Section 8(a)(5) and (1) by failing and refusing to (1) notify the Union of their intentions to discharge Santiago, (2) give the Union a reasonable opportunity to confer with the Respondents about this discharge, and (3) grant the Union access to the Bohemia facility.

The Respondents' unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondents have violated Section 8(a)(1), (3), and (4) by discharging William Santiago, we shall order the Respondents to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. We also shall order the Respondents to make Santiago whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondents also shall be required to remove from their files any ref-

erence to Santiago's unlawful discharge, and to notify him in writing that this has been done.

Further, having found that the Respondents have violated Section 8(a)(5) and (1) of the Act, we shall order the Respondents to comply with the terms of the 1998–2002 collective-bargaining agreement, including by notifying the Union of their intentions to discharge or change the regular work shift of a shop delegate, by giving the Union a reasonable opportunity to confer with the Respondents about such a discharge or change in work shift, and by granting the Union's accredited representatives, at their request, access to the Respondents' Bohemia facility.

ORDER

The National Labor Relations Board orders that the Respondents, Quality Color Graphics, Inc. and American Heatset East Printing, Inc., Bohemia, New York, a single employer, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because of their union activities and support for Local One-L, Amalgamated Lithographers of America, Graphic Communications International Union, AFL–CIO, and because they do not select Local 72, National Organization of Industrial Trade Unions as the bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time lithographic production employees in the sheet-fed, electronic prepress and preparatory/prepress departments excluding sales, professional, office and clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

(b) Discharging or otherwise discriminating against employees because they give testimony to the Board.

(c) Failing and refusing to comply with the 1998–2002 collective-bargaining agreement between the Respondents and Local One-L by failing to notify the Union of their intentions to discharge or change the regular work shift of a shop delegate, by failing to give the Union a reasonable opportunity to confer with the Respondents about such a discharge or change in work shift, and by refusing to grant the Union's accredited representatives, at their request, access to the Respondents' Bohemia, New York facility.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer William Santiago full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make William Santiago whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from their files any and all references to the unlawful discharge of William Santiago, and within 3 days thereafter notify him in writing that this has been done and that the discharge will not be used against him in any way.

(d) Comply with the terms and conditions of the 1998–2002 collective-bargaining agreement described above, including the provisions regarding notification to the Union concerning the intention to discharge or change the regular work shift of a shop delegate, and requests by the Union's accredited representatives for access to the Respondents' Bohemia, New York facility.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at their facility in Bohemia, New York, copies of the attached notice marked "Appendix".[1] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since December 31, 1999.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. April 28, 2000

Sarah M. Fox, Member

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge or otherwise discriminate against you because of your union activities and support for Local One-L, Amalgamated Lithographers of America, Graphic Communications International Union, AFL–CIO, and because you do not select Local 72, National Organization of Industrial Trade Unions as the bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time lithographic production employees in the sheet-fed, electronic prepress and preparatory/prepress departments excluding sales, professional, office and clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

WE WILL NOT discharge or otherwise discriminate against you because you give testimony to the Board.

MWE WILL NOT fail and refuse to comply with the 1998–2002 collective-bargaining agreement between us and Local One-L by failing to notify the Union of our intentions to discharge or change the regular work shift of a shop delegate, by failing to give the Union a reasonable opportunity to confer with us about such a discharge or change in work shift, and by refusing to grant the Union's accredited representatives, at their request, access to our Bohemia, New York facility.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer William Santiago full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make William Santiago whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest.

WE WILL, within 14 days from the date of this Order, remove from our files any and all references to the unlawful discharge of William Santiago and, within 3 days thereafter notify him in writing that this has been done and that the discharge will not be used against him in any way.

WE WILL comply with the terms and conditions of the 1998–2002 collective-bargaining agreement described above, including the provisions regarding notification to the Union concerning our intention to discharge or change the regular work shift of a shop delegate, and requests by the Union's accredited representatives for access to our Bohemia, New York facility.

QUALITY COLOR GRAPHICS, INC. AMERICAN HEATSET EAST PRINTING, INC.